

1                   IN THE DISTRICT COURT OF THE UNITED STATES  
2                   DISTRICT OF SOUTH CAROLINA  
3                   CHARLESTON DIVISION

4                   UNITED STATES OF AMERICA,         )                   2 :04-CR-618  
5    )  
6    )                   Plaintiff      )  
7    )                   Charleston,  
8    )                   South Carolina  
9    )                   September 21, 2010  
10                   VS                                      )  
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8                   TRANSCRIPT OF SENTENCING HEARING  
9                   BEFORE THE HONORABLE P. MICHAEL DUFFY,  
10                   SENIOR UNITED STATES DISTRICT JUDGE

11                   APPEARANCES:

12                   For the Plaintiff:                   MR. SEAN KITTRELL  
13    Assistant United States Attorney  
14    P.O. Box 978  
15    Charleston, SC 29402

16                   For the Defendant:                  MR. DALE COBB  
17    Belk Cobb Infinger  
18    and Goldstein  
19    P.O. Box 71121  
20    Charleston, SC 29415

21                   Court Reporter:                   Amy C. Diaz, RPR, CRR  
22    P.O. Box 835  
23    Charleston, SC 29402

24    Proceedings recorded by mechanical shorthand,  
25    Transcript produced by computer-aided transcription.

1                   THE COURT: If y'all are ready, call the case.

2                   MR. KITTRELL: This is *United States of America vs.*

3                   *Armond Wright*, Criminal Number 2:04-618. The defendant is  
4 present represented by Mr. Dale Cobb, who is also present.  
5 We're here for purposes of sentencing, having pled guilty on  
6 the 3rd of June, 2009 pursuant to a plea agreement.

7                   And I would note for the Court's edification that  
8 paragraph 9 of that same plea agreement provides for a  
9 recommended sentence of 10 years with the two counts  
10 consecutive each to the other, as to each one. It's  
11 therefore an uncontested sentencing and there are no  
12 objections to the Presentence Report.

13                  THE COURT: Thank you very much.

14                  Mr. Cobb, would you and your client stand at the  
15 podium, please?

16                  Mr. Kittrell has appropriately put in the record  
17 what the agreements have been. And for the record, I need to  
18 go through what the Guidelines provide.

19                  The total offense level is 21.

20                  Criminal History Category is VI.

21                  The defendant is not eligible for probation.

22                  There is a term of imprisonment from 77 to 96  
23 months, plus a consecutive 60-month term of imprisonment as  
24 to Count 3.

25                  However, as the defendant is a Career Offender

1 pursuant to the Guidelines under Section 4B1.1(c) (2) (B), the  
2 Guideline range becomes 262 to 327 months.

3 Provisions of Guidelines 5G1.2(e) apply. The total  
4 punishment is to be apportioned among the counts of  
5 conviction with the 924(c) count imposed consecutively to any  
6 other count of conviction.

7 There is a four to five-year supervised release.

8 A fine has not been calculated due to the  
9 defendant's inability to pay a fine.

10 Restitution is not an issue in the case.

11 There is a \$300 special assessment fee.

12 Is everyone in agreement those would be the  
13 Guidelines after the Plea Agreement and the Court's  
14 concurrence in that?

15 MR. KITTRELL: Yes, sir.

16 MR. COBB: Yes, Your Honor.

17 THE COURT: Thank you.

18 That being the case, let me say that the Plea  
19 Agreement was brought to me prior to the defendant pleading  
20 guilty and I agreed with the Government and the defendant  
21 that the 120-month sentence is appropriate; and therefore  
22 that was incorporated in the Plea Agreement and we'll proceed  
23 accordingly.

24 Before I hear from the Government and the defendant,  
25 I would ask the clerk to make this Plea Agreement -- excuse

1                   me -- this Presentence Report part of the record. And since  
2 there are no objections to it, I'll adopt the factual  
3 statements in the Presentence Report as the Court's finding  
4 of fact for the purposes of this hearing.

5                   MR. COBB: Your Honor, can I interrupt just a  
6 second? Because Mr. Wright had asked for a suppression  
7 hearing and the suppression hearing was held and ruled  
8 against, the only objection that he has are to the offense  
9 code in paragraph 10, 11 and 12, but that was taken care of  
10 in the suppression hearing.

11                  THE COURT: Thank you. Well, that's preserved for  
12 the record.

13                  MR. COBB: Yes, sir.

14                  THE COURT: And anything else that was not objected  
15 to I'll adopt. I've ruled on those. I'll adopt my rulings  
16 for the purposes of this hearing.

17                  The Presentence Report will remain under seal unless  
18 it is needed for appellate purposes and the recommendation to  
19 the Court will remain under seal until further order of the  
20 Court.

21                  Having so stated, does the Government have anything  
22 else to add before I listen to Mr. Cobb and the defendant?

23                  MR. KITTRELL: Just that the Government would not  
24 object to any motion for variance from the Guidelines in  
25 order to achieve the sentence in the Plea Agreement, given

1           the fact that it appears the defendant's history category is  
2 overrepresented by the Guideline sentence.

3           THE COURT:    Thank you very much.

4           Mr. Cobb, I'll be glad to hear from you, and if you  
5 would incorporate into your remarks the reasons you think I  
6 should agree to the variance, go ahead and add that, as well.

7           MR. COBB:    Thank you, Your Honor.

8           If it please the Court? In court today with Armond  
9 are his grandparents, who are seated in the second row over  
10 there. They live in Georgetown and they, in essence, have  
11 pretty much raised him and are here on his behalf.

12           As Mr. Kittrell indicated, the predicate offenses  
13 that triggered the Career Offender status were possession of  
14 marijuana cases. And each of the two predicate offenses  
15 dealt with ounce amounts, not pounds, not kilos, not multiple  
16 kilos, not multiple pounds, and in any ordinary setting,  
17 probably should have or could have been dealt as possession  
18 cases and held as misdemeanors. Be that as it may, for  
19 whatever reason, his counsel had him plead to possession with  
20 intent to distribute. Those provide the predicate amounts.

21           Unfortunately, as Mr. Kittrell indicated, that sort  
22 of overstates what his risk is. The amount in controversy  
23 here in this case was, again, a little over 2 ounces, 6 and 7  
24 grams. So there is no question that by the report you see  
25 that Mr. Wright has had a history of drug use. From a very

1           early age, he was involved with marijuana and with cocaine  
2           and with alcohol. So a good bit of the problems that he has  
3           had with the possession of drugs is the use of drugs, as  
4           well.

5           There was no indication in this case whether or not  
6           they had been watching him, whether or not he was dealing,  
7           whether they knew that he was dealing, there was no  
8           indication of that whatsoever. This was just an arbitrary  
9           traffic stop and that they found this stuff thereafter.

10           So because of that, and because of his age, we think  
11           that he is a prime candidate for a variance from the 262 to  
12           327, and his previous counsel had negotiated with the  
13           Government two 60-month sentences that was placed into the  
14           Plea Agreement.

15           Your Honor, he has three children, sadly one of  
16           which was born since, has not seen the third child. But  
17           while he was out on bond prior to this arrest, he was working  
18           at a number of different jobs as a roofer and in construction  
19           and other jobs that he could get to help support -- he was  
20           under a court order to pay child support. He was doing that.  
21           He's concerned that he's in arrears and has been declared to  
22           be in arrears because of his incarceration status, but of  
23           course he has no way of dealing with that.

24           He's very much interested in continuing with drug  
25           counseling that he started when he was in the Charleston

1 County Detention Center and the Georgetown County Detention  
2 Center.

3 We would ask the Court to, in its judgment and  
4 commitment form, recommend that he be committed -- and again,  
5 this is a recommendation only, I know the BOP policy changes  
6 from time to time as to who is eligible to go into the RDAP  
7 program, but that he be admitted to go through the RDAP  
8 program and continue his drug and alcohol counseling.

9 We would also ask Your Honor that he be permitted to  
10 remain in South Carolina in one of the facilities that the  
11 Bureau of Prisons has in South Carolina, the closest of which  
12 would be Williamsburg, to his grandparents. His grandfather  
13 has a bad heart condition and is not able to travel very far.  
14 That would be helpful for purposes of visitation, but we  
15 understand that it's up to his classification status and  
16 space available. But we would ask that he be -- that you  
17 recommend that he be permitted to serve his sentence in South  
18 Carolina at an institution that has the RDAP program.

19 Your Honor, he has handed up through me to you a  
20 letter concerning his past, what he is doing now, and what he  
21 hopes to do in the future, but I think very succinctly says  
22 that he is remorseful for his actions, he's concerned about  
23 his drug use, he wants to get that behind him and he does  
24 want to get out and help support his family.

25 THE COURT: Let me say for the record that I have

1           read the letter Mr. Wright sent to me through Mr. Cobb, and I  
2 understand your arguments he puts forth and the clarity that  
3 he brings to the subject in that letter, so thank you.

4           Mr. Wright, anything else you would like to add?

5           THE DEFENDANT: Your Honor, um, just to reiterate  
6 some of the things that he was saying, that my lawyer was  
7 saying, that this -- this case stems from me being a drug  
8 user. And I know I have been one since an early age, as you  
9 stated. And I know that's what led to my problem and me  
10 being in the situation that I am today. And that from the  
11 time of this incident, I had been drug free and then I sought  
12 out help before and after being incarcerated. Not only that,  
13 I have been crime free since that time, also. I haven't had  
14 any other problems dealing with that or -- and that I would  
15 have been a hard working, productive member of society and a  
16 good and supportive father to my children.

17           And I'm just asking the Court for all leniency that  
18 the Court will allow in my favor because I want to get back  
19 out and I want to take care of my family and my  
20 responsibilities as I have been doing. And I just wanted the  
21 chance to continue that, sir. And I'm just asking for a  
22 chance to be given me to allow me to do that, sir. And I  
23 just -- I would appreciate any kind of leniency that Your  
24 Honor would be able to give me.

25           And I thank you for your time and allowing me to

1 speak.

2 THE COURT: Thank you. And I thank your  
3 grandparents for being here. I know it means a lot to you  
4 that they are here to support you. I want them to understand  
5 that it means a lot to me, as well, and I appreciate them  
6 being here.

7 You know, it's the saddest thing in the world to see  
8 somebody such as yourself, who is so well spoken and  
9 represents his point of view as well as you do, and for whom  
10 the light bulb didn't come on until much too late. It's  
11 disturbing and frustrating to me to see people go through the  
12 state system with repeated arrests and suspended sentences,  
13 and then all of a sudden they end up in Federal Court and  
14 they are facing massive amounts of time in prison. And at  
15 that point, it's like running into a brick wall. And I'm  
16 sure that's the way you felt when you saw the Guidelines in  
17 this case and your listing as a Career Offender.

18 I'm going to grant the motion for variance and I'm  
19 going to sentence you to the agreed-upon number of years  
20 because I think that your record or the Guidelines overstates  
21 your record. You had multiple offenses, as Mr. Cobb just  
22 pointed out, they need not have resulted in the categories  
23 that the Guidelines place you in.

24 Having said that, I would be remiss if I didn't tell  
25 you and warn you that while 10 years is more time than you

1 want to spend, it is a considerable less amount of time than  
2 the Guidelines call for. So the agreement of the U.S.  
3 Attorney brings you down to where your Guidelines should have  
4 been without the Career Offender status. But if you get in  
5 trouble again when you are released, you will spend the rest  
6 of your life in jail. I can't think of any other way to say  
7 it than the key is in your hand. You are too smart, you are  
8 too invested in your family to ever put yourself in that  
9 position. But if you don't lick that drug program, then you  
10 will spend the rest of your life in jail.

11 I'm going to ask the Bureau of Prisons to put you in  
12 the most intensive drug treatment program it has. Having  
13 read your letter, you are ready for that program, you want to  
14 take advantage of it, but not just in that program, but later  
15 when you are released. It will be a daily battle. It will  
16 be something you can never again give in to. Peer pressure,  
17 lack of funding, you name it, is no excuse for your getting  
18 back involved with drugs. And I'm comfortable by the time  
19 you leave prison you will have been clean for a long time,  
20 but once you slip back, it's so easy to go all the way down.  
21 So you need to think about that now and you need to think  
22 about it in the future every day. And if you do, then I  
23 think you will be available for your children, you will be  
24 available for the mother, and hopefully that you will be a  
25 productive, contributing citizen, and I think you can be.

1                   MR. COBB: Your Honor, the only other thing we  
2 wanted to make sure is he got credit from the pretrial  
3 detention time. He has been in custody now for several  
4 years.

5                   THE COURT: It's been a long time. This case has  
6 been continued for a number of reasons and the Presentence  
7 Report was completed way back in --

8                   MR. COBB: 2009.

9                   THE COURT: -- 2009. So I'll ask and direct that  
10 the time served would be credited and it will be.

11                  MR. COBB: Thank you, Your Honor.

12                  THE COURT: And I would ask that you place him in a  
13 facility in South Carolina closest to his home.

14                  Having considered the Guidelines and also the  
15 sentencing factors and the agreement of the parties, it's the  
16 judgment of Court the defendant, Armond Rashawn Wright, is  
17 hereby committed to the custody of the Bureau of Prisons for  
18 a term of 120 months. Consisting of 60 months as to Counts 1  
19 and 2, those to run concurrently, and 60 months as to Count  
20 3, that term to run consecutive to the other term.

21                  MR. COBB: Your Honor, he only pled guilty to Counts  
22 1 and 3.

23                  THE CLERK: 2 and 3.

24                  MR. COBB: Excuse me, 2 and 3.

25                  THE COURT: 2 and 3, I'm sorry.

1                   MR. PARADIS: Your Honor, the Presentence Report  
2 was done as a consent, and I think the recommendation was  
3 done prior to his guilty plea and that's the reason that --

4                   MR. COBB: He pled to an 841 and a 944.

5                   THE COURT: Well, thank you. The sentence is  
6 amended to reflect 60 months as to the first count and 60  
7 months consecutive as to Count 3.

8                   MR. COBB: Thank you, Your Honor.

9                   THE COURT: Thank you for correcting me.

10                  A fine is waived.

11                  There is a \$300 special assessment fee, which is due  
12 beginning immediately.

13                  Upon his release from imprisonment, he'll be placed  
14 on supervised release for a term of five years as to both  
15 counts to run concurrently.

16                  Within 72 hours of his release from the custody of  
17 the Bureau of Prisons, the defendant will report in person to  
18 the Probation Office in the district to which he is released.  
19 And while on supervised release, he must comply with the  
20 mandatory and standard conditions of supervision as outlined  
21 in Title 18 of the U.S. Code, Section 3583(d), also the  
22 following special conditions:

23                  The defendant shall participate in a program of  
24 testing and treatment for substance abuse as approved by the  
25 probation officer until such time as he's released from the

1 program by the probation officer.

2 He also shall enroll in and complete an educational  
3 program as directed by the probation officer with the  
4 objective of obtaining his GED, unless he's already obtained  
5 that during his period of incarceration.

6 Mr. Wright, I'm comfortable you will accomplish that  
7 while you are incarcerated and I would also encourage you to  
8 take advantage of any vocational training made available to  
9 you during that time, so when you get out, you will be able  
10 to secure good employment.

11 Unless otherwise gainfully employed, the defendant  
12 will complete a vocational training program while on  
13 supervised release with the objective of learning and  
14 obtaining lawful employment as directed and approved by the  
15 U.S. Probation Officer.

16 Does either the Government or the defendant have any  
17 objections to the form of the sentence?

18 MR. KITTRELL: No, sir. The Government would move  
19 to dismiss Count 1 of the Indictment pursuant to paragraph 4  
20 of the Plea Agreement.

21 THE COURT: I grant that motion.

22 MR. COBB: Thank you, Your Honor.

23 THE COURT: Any objections, Mr. Cobb?

24 MR. COBB: No, Your Honor.

25 THE COURT: Mr. Wright, a defendant has a right to

appeal his sentence. If you wish to appeal this sentence, any Notice of Appeal must be filed within 10 days after the judgment is entered, and Mr. Cobb will tell you when that is. It will just be a matter of a couple days at most. And if you so request, the Clerk of Court will prepare and file a Notice of Appeal on your behalf. You understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Good luck to you, sir.

MR. COBB: The only other thing is his grandparents are here from Georgetown, could he have a few minutes with them downstairs?

THE COURT: I would ask the marshals to arrange that. Thank you very much.

MR. COBB: Thank you, Your Honor.

THE COURT: Thank y'all.

\* \* \* \* \*

I certify that the foregoing is a correct transcript from the record of proceedings in the above-titled matter.

Amy C. Diaz, RPR, CRR

October 24, 2013

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